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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

-----:
UNITED STATES OF AMERICA :
 :
v. : Criminal Action No.
 :
INGMAR GUANDIQUE, : 2009 CF1 9230
 :
Defendant :
-----:

Washington, D.C.
Thursday, February 7, 2012

The above-entitled matter came on for Hearing before the Honorable Gerald Fisher, associate judge, in Courtroom Number 218, commencing at 2:14 p.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS HER NOTES AND RECORDS OF TESTIMONY AND PROCEEDINGS IN THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Government:

Margaret Chriss, Esquire
Alessio Evangelista, Esquire
David Gorman, Esquire
Assistant United States Attorney

On behalf of the Defendant:

James Klein, Esquire
Santha Sonenberg, Esquire
John Anderson, Esquire
Joshua Deahl, Esquire
Public Defender Service
Washington, D.C.

2012 APR - 8 P 2:14
OFFICIAL REPORTER
RECORDED

Mahalia M. Davis, RPR
Official Court Reporter (202) 879-1029

1 THE DEPUTY CLERK: Your Honor, we call case number
2 2009 CF1 9230 in the matter of United States v Ingmar
3 Guandique.

4 All parties in this matter, please step forward
5 and identify yourself for the record.

6 MR. EVANGELISTA: Good afternoon, Your Honor,
7 Alessio Evangelista for government.

8 THE COURT: Mr. Evangelista.

9 MR. CHRISS: Margaret Criss on behalf of the
10 government.

11 THE COURT: Ms. Criss.

12 MR. GORMAN: Good afternoon, Your Honor, David
13 Gorman also on behalf of the government.

14 THE COURT: Mr. Gorman, good afternoon.

15 MR. ANDERSON: Good afternoon, Your Honor, John
16 Anderson on behalf of Ingmar Guandique.

17 MR. ANDERSON: Mr. Anderson, good afternoon.

18 MS. SONENBERG: Santha Sonenberg, good afternoon,
19 Your Honor, on behalf of Mr. Guandique, good afternoon.

20 THE COURT: Mr. Guandique, good afternoon.

21 MR. DEAHL: Joshua Deahl on behalf of the.

22 THE COURT: Mr. Deahl.

23 MR. CAROME: Good afternoon, Your Honor, Patrick
24 Carome on behalf of the press interveners.

25 THE COURT: Good afternoon to all of you.

1 We do have -- I'm sorry, we do have a -- I though
2 the interpreter was standing behind him. We have the
3 interpreter here?

4 Mr. Guandique, can you hear me?

5 THE DEFENDANT: Yes.

6 THE COURT: It's being interpreted for him? He's
7 able to hear now, Ms. Sonenberg?

8 MS. SONENBERG: Yes.

9 THE COURT: First of all, you all have a seat.
10 Thank you. Let me just start by apologizing. I hope
11 everybody got word that I really can't make this an extended
12 hearing this afternoon just because whatever I've got has
13 sort of kicked up into another gear. I'm having a hard time
14 getting through some of them this and didn't want to wipe
15 out the entire senior staff of the U.S. attorney's office
16 and the defense by having bench conference that would infect
17 them. So we'll have to pick another date to complete
18 today's hearing.

19 Let me say a couple of things, I don't know if
20 everybody -- I just received this morning the decision from
21 the Court of appeals on the public defender office's motion
22 for summary reversal, which has denied the motion. I don't
23 know if the parties have read it, it's a one page order, but
24 if so, you might -- if you haven't seen it, you might want
25 to take a look at that. It factors a little bit into one of

1 my rulings today.

2 I did want to make the ruling on the motion to
3 stay -- give me just one moment. I think we informed all
4 the parties that I had -- after studying the issue and
5 considering yesterday's arguments, I denied the motion to
6 stay. I guess affectively we'll get a stay because I can't
7 go forward today, but let me just articulate the reasons for
8 that.

9 Again, the four factors that I have to consider in
10 reaching a decision is whether there's a substantial
11 likelihood of success on the merits, that is the media's
12 success on the merits. And as I said yesterday, at least as
13 I understand that term, I think they make that showing. I
14 might not believe that it's more likely than not that they
15 would prevail, but that's not what substantial likelihood
16 means. I would say that I think their prospects of
17 succeeding are probably somewhat diminished by the Court of
18 appeals decision today.

19 Secondly, whether the press would suffer
20 irreparable harm if the hearing that is scheduled for today
21 were held without them being able to participate or overhear
22 the arguments that are made. I don't find that there's any
23 irreparable harm to that. We're going to be discussing
24 discovery issues and maybe some related issues. There's
25 going to be a transcript of it. Whenever comes the time for

1 these proceedings to be disclosed to the public the media
2 will have access to that. And I don't really think that
3 there's any loss to them in not being able to see the
4 demeanor of the lawyers, myself in those discussions. So I
5 don't really think there's any irreparable harm there.

6 I don't think that more harm will result from the
7 denial of the stay than the granting of the stay. I don't
8 really think there's going to be any disadvantage to the
9 public or to the press as its representative. And I really
10 don't think that the public's interest will be disserved.
11 Ultimately what can be disclosed will be disclosed. I don't
12 think there's a necessity to do it right at the moment. I
13 think there's other compelling interests to the contrary.
14 And I would, therefore, close the next hearing that we're
15 going to have that would have gone forward today. And
16 again, when the time comes, that hearing, hopefully in
17 whole, but certainly in part, will be disclosed to everyone.

18 So that's my ruling. So whenever we reschedule
19 today's hearing, the press will not be able to participate.
20 I give you the same option as I did at the last hearing,
21 which was, you're welcome to sit in the courtroom if you
22 want to, we'll then do it as bench conferences. But if the
23 media's willing to allow us to do it in a, I guess,
24 restricted but open courtroom, and then have you brought in
25 to make public statements thereafter, I'd be happy to do it

1 that way. I leave it to the media to make a decision on
2 that.

3 I did just want to say one thing in that regard,
4 there was an issue that came up yesterday. I'm not sure
5 I've been very clear on it before. But you had asked
6 about -- or had in essence said that because there had been
7 no prior showing for today's hearing about the necessity of
8 closing the hearing that we shouldn't do so and that also
9 there was some suggestion that that didn't occur at the very
10 first hearings that we had.

11 One of the arguments that the defense makes in
12 apposing the stay, is that the media has been dilatory in
13 intervening here. I would agree that there's some delay,
14 but I don't think they've been dilatory. I think the way
15 things unfolded, it probably took a little time for the
16 media to decide how they should be approaching these
17 matters.

18 The very first hearing, I made no announcement of
19 the hearing in advance, because, quite frankly, I don't
20 think I was thinking that it was going to be a closed
21 hearing. It was just going to be a necessary hearing. And
22 then once we began discussing the information, I think I
23 came to the conclusion that it needed to be closed and
24 therefore -- so at least we can make the statements in
25 opened court, and that's how we proceeded.

1 So I think the media's delay is maybe a little bit
2 of a factor in this equation about the stay, but I don't
3 give it much weight. I don't think that they waived their
4 right to intervene and seek a stay. I just think on the
5 merits I would deny that.

6 So, there are some matters that we need to take up
7 at the next hearing. There are the discovery issues that
8 you --

9 MR. CAROME: Your Honor, may I be very briefly
10 heard.

11 THE COURT: Sure.

12 MR. CAROME: Thank you, Your Honor. We, for the
13 record, obviously reserve our objection with respect to the
14 rulings you just announced and the continued closing.

15 We would request that the Court impose some sort
16 of deadlines and or timeframe with a near term to them with
17 respect to two things. First, the Court has indicated that
18 it asked the government to take some sort of alternative
19 measures to address the safety concerns in a manner that
20 wouldn't require continued secrecy.

21 We would ask the Court to set a fixed and short
22 term timetable for the government to take very diligent and
23 expeditious steps to address that. I would also ask in that
24 regard that the Court clarify -- that we would like
25 confirmation on the record that the government is in fact

1 actively pursuing that at this moment.

2 THE COURT: Can I just say, I have no doubt about
3 that that they are doing that. And I did in the sealed
4 portion of the prior hearing did give them deadlines.

5 MR. CAROME: Can the Court inform the public of
6 those deadline?

7 THE COURT: I would say this, I gave them 90 days
8 to take certain actions and then I would review that at that
9 time to see if we then order disclosure in whole or in part.
10 That's 90 days from the early January hearing. So we're
11 into -- it might take us into March or April at an outer
12 limit, but there might be -- I might look at it differently
13 even between now and then. But that's the deadline I gave
14 them, given the representations made to me.

15 MR. CAROME: We would ask that the Court
16 reconsider whether that period can be shortened.

17 Secondly, related to the timetable, is the
18 redactions of the pleadings, filings, transcripts, et
19 cetera --

20 THE COURT: One of the things I was just going to
21 sort of add to the next agenda, although you won't be able
22 to participate, was, I was going to ask the parties to
23 address those two issues at the next hearing that we have to
24 see if we can't disclose transcripts and pleadings in whole
25 or in part as well. I think we're going to have the next

1 hearing in about a week's time. I want to try to come to a
2 resolution of that, in about a week.

3 MR. CAROME: And even those timing questions, the
4 Court intends to conduct will be under seal?

5 THE COURT: What do you mean by, "timing
6 question"?

7 MR. CAROME: Well, questions about the timing or
8 redacted transcript, the parties are working diligently to
9 --

10 THE COURT: My hope would be -- I'm sorry. My
11 hope would be that we come to some agreement about what can
12 or cannot be disclosed to the public about the transcripts
13 and pleadings at the next hearing. So I wouldn't be
14 delaying it beyond that. I would hope for some somewhat
15 rapid disclosure. I'm not saying that we will disclose
16 anything, but I'm hoping to come to a conclusion about that
17 one way or another. So I hope to do that rapidly.

18 MR. CAROME: Thank you, Your Honor. We do
19 continue to object and do feel that each day that passes
20 here is further irreparable injury. And we would ask the
21 Court to attempt to make open access available as soon as
22 possible. Thank you, Your Honor.

23 THE COURT: Appreciate that.

24 So I think just in terms of -- the next things we
25 need to do is to set a date. I know we've been in -- my

1 chambers has been in some communications with the parties
2 and I suggested two dates. I think one of them, Mr. Klein,
3 you can't be here, that's next Tuesday afternoon; is that
4 correct.

5 MR. KLEIN: That is correct, I'll be out Monday,
6 Tuesday, Wednesday of next week, Your Honor. If Thursday is
7 possible.

8 THE COURT: I think we can do it Thursday. We'll
9 have to do some scrambling just on some other cases, but I
10 think we can do it. It will probably be -- let me set it
11 for 2:30. It's possible we'd have to bump it back a little
12 bit, just because of some other matters in the morning that
13 may spill over in the calendar.

14 And I know that there's one other issue that the
15 parties have asked me to try to resolve that I don't think I
16 can discuss. I think I'm going to be able to do that on the
17 pleadings, though, and try to get an order out to you today
18 where I'm at. I don't know if there are any other issues
19 the parties need to address at this point.

20 MR. KLEIN: Can we talk about that at the bench.

21 THE COURT: Yeah, I just really -- I'm not sure
22 you want to be anywhere near me at this point or at any time
23 for that matter, but certainly not now. I'm happy to have
24 you approach, but it's assumption of the risk.

25 MR. CAROME: Just for the record, the press

1 objects to the closure that's happening right now.

2 THE COURT: Good, I appreciate that.

3 (Bench conference.)

4 MR. KLEIN: I really don't want to get close to
5 you, Your Honor.

6 THE COURT: Yeah, please don't.

7 MR. KLEIN: I'm going away and there was a
8 possibility that in conjunction with going away -- I'm
9 leaving tomorrow, that's why I wanted to talk to you.
10 There's an attorney who I would like to talk to. He would
11 be helpful to the defense. He's -- that's all, he's just
12 not a PDS attorney and it would be in conjunction with this
13 trip. And, of course, he would be under a protective order
14 and he would be chosen to make sure -- we don't know what he
15 shouldn't know, but we can't imagine he's in any way
16 involved in the matters we don't know about.

17 THE COURT: Do you have confidence that this
18 person if you tell him he cannot discuss this with anybody
19 else that he would abide -- he or she would abide by that?

20 MR. KLEIN: This is an attorney I've known since
21 over a decade and he operates at the highest levels, Your
22 Honor.

23 THE COURT: I'll just say this, in term of the
24 defense -- and I saw the governments first response earlier
25 today. What the defense has requested in its proffered

1 explanation, I'm willing to grant the motion to expand to
2 the requested range that you're talking about. So, if you
3 think this encompasses that, I just would strongly urge this
4 person not to have any further discussions or maybe you can
5 somewhat limit the specifics of what you talk to him about.
6 But that would be what I would require.

7 MR. EVANGELISTA: I think if, as we indicated in
8 our response, if we can make an ex parte proffer on just the
9 attorney issue, I think that's the key issue.

10 THE COURT: Sure.

11 MR. EVANGELISTA: And it may not influence the
12 decision at all --

13 THE COURT: Let me hear from you on that and then
14 I'll --

15 MR. ANDERSON: There is one other very very brief
16 issue we wanted to address.

17 THE COURT: Sure.

18 MR. ANDERSON: Just in terms of the timing of
19 things. We're hoping that the Court could impose some
20 deadlines in anticipation of next Thursday's hearing in --

21 THE COURT: In terms --

22 MR. ANDERSON: In terms of pleadings from the
23 government. If the government's going to respond in
24 writing, perhaps by Monday and then we can file 24 hours in
25 advance of Thursday's hearing.

1 THE COURT: Do you think you could do that?

2 MR. GORMAN: Unlikely.

3 THE COURT: I'm sorry.

4 MR. GORMAN: Unlikely.

5 THE COURT: Tuesday?

6 MR. EVANGELISTA: Yes.

7 THE COURT: I'll get it by Tuesday and if you can
8 get your reply in on Wednesday, that's fine.

9 MR. ANDERSON: And the only other request was with
10 respect to the proposed redactions in both the pleadings and
11 the transcript, if the government could provide us by Monday
12 or Tuesday with their proposed versions.

13 THE COURT: Are you able to do that?

14 MR. EVANGELISTA: Yes.

15 THE COURT: By Tuesday I would require that as
16 well.

17 MR. EVANGELISTA: Okay.

18 MR. ANDERSON: Thank you, Your Honor.

19 MR. EVANGELISTA: Your Honor, we may have to do
20 this together because we have have information about this.

21 MR. GORMAN: And we ask that this portion be under
22 seal and separate.

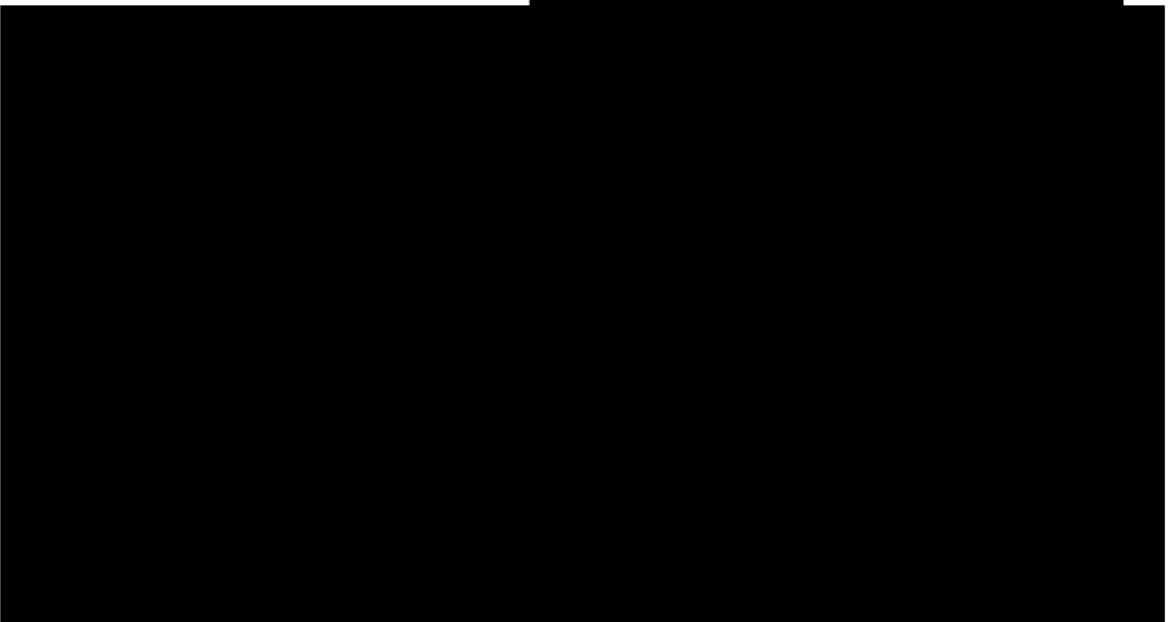
23 MR. EVANGELISTA: And ex parte.

24 (Whereupon, all defense attorneys left the bench.)

25 THE COURT: Madam Court Reporter, this portion is

1 going to be under seal and not accessible to the defense.

2 MR. EVANGELISTA: 

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12 MR. GORMAN: Just in terms of your discussion with
13 the defense, Mr. Klein specifically, if you could be
14 satisfied that that person is not -- our assumptions are
15 that person may be barred in California and he's seeking
16 information. And again, there doesn't appear to be anything
17 wrong with that. But if the person has close ties to the
18 bar in Fresno, given what we've heard, we may have -- we may
19 need to make further representations to you by way of Fresno
20 about the contacts that that person would have. Because --
21 and if you're satisfied that there's a distance then.

22 THE COURT: That's fine. I'm fine with that. Can
23 I ask you just one sort of creating my own thinking. Just
24 given, I've received media person -- persons of the court
25 from the media all of the articles that have been written on

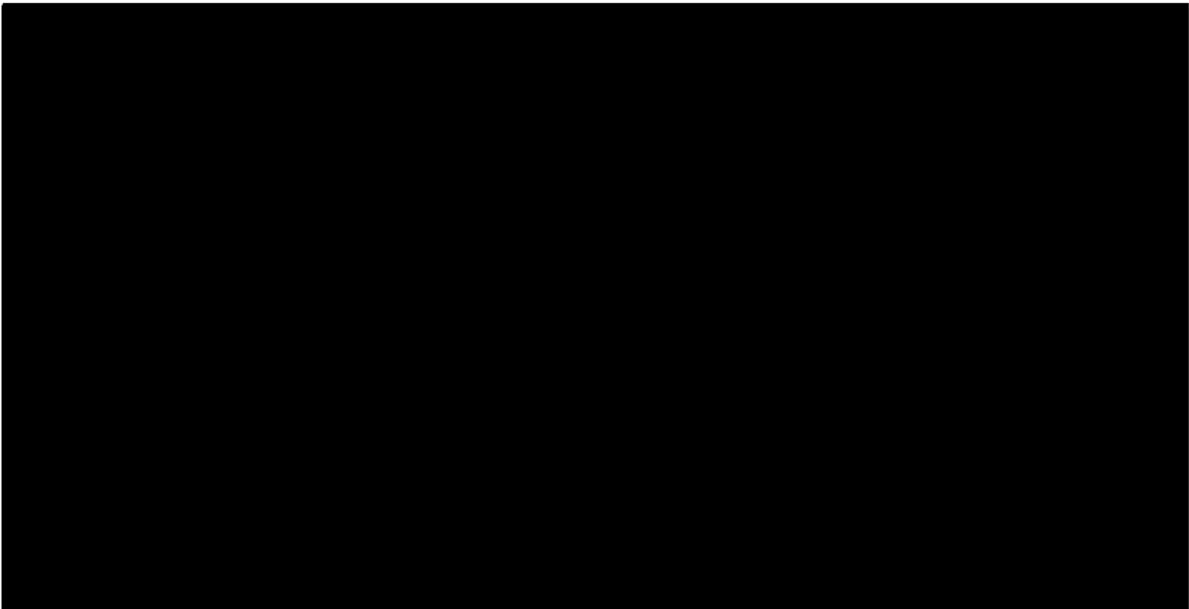
1 this, is there really at this point, and I'm not saying
2 today, but in the very near future -- it seems that most of
3 the articles are speculated. I just don't think that's even
4 a -- in terms of concerns you had, if people speculating
5 about that, they've already made that speculation. I'm just
6 wondering if at some point if at least we can disclose that
7 fact.

8 MR. GORMAN: We would ask the Court not to change
9 its mind on that strongly, but understand that that's part
10 and parcel as to why we certainly are endeavoring that the
11 90 days is pretty much the drop dead time, we accept that,
12 at least at this point, unless we learn of something
13 different, we certainly accept that. But we do think that
14 it could do additional damage.

15 Already the speculation, we think, have done some
16 damage in terms of threats to family members, we know that,
17 based on those statements. And we can only think that
18 nothing good can come of that. Because we think the Court
19 agrees that that adds very little to the dialogue. It will
20 just confirm the speculation that doesn't really help the
21 disclosure that I think the Court is seeking.

22 MR. EVANGELISTA: 
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(Open court)

THE COURT: Can I just ask defense counsel to come back for one moment.

(DEFENSE SEALED BENCH CONFERENCE)

THE COURT: Is there any further requests for today? So we'll reconvene on Friday the -- Thursday the 14th at 2:30. I don't know what courtroom. I think we'll be in courtroom 315, but I don't know with certainty. I guess we'll see at that time how we need to conduct the hearings, but so be it.

Mr. Carome, do you need a copy of the court of appeals decision? If you have a copy counsel.

MR. KLEIN: Your Honor, before you do that, it was unclear to me --

THE COURT: Whether it's sealed or unsealed?

MR. KLEIN: Yes. The order does not say sealed,

1 but I contacted the Court because the transmission says
2 sealed and I spoke to a clerk who said at the time it was
3 considered under seal and hadn't been --

4 THE COURT: Can I read -- let me read you one -- I
5 don't think we will have any problem with sealing. It says
6 this much, the last paragraph: "It's further ordered that
7 appellant's motion for summary reversal is denied. Summary
8 reversal is appropriate only when the basic facts of both
9 uncomplicated and undisputed and that the lower court's
10 ruling rests on the narrow and clear cut issue of law and
11 there's a site.

12 That standard is not met here on the record before
13 us. We cannot readily conclude that the trial court
14 violated the requirements of the First and Sixth Amendment
15 of the United States Constitution or abused its discretion
16 by entering the time limited order sealing the proceedings
17 to protect the compelling interests counseling against
18 immediate public disclosure identified by the United
19 States."

20 So that's the Court's ruling.

21 MR. CAROME: Thank you, Your Honor.

22 THE COURT: Thank you.

23 We'll see some or all of you next Thursday.

24 MR. ANDERSON: Your Honor, if I could just make a
25 request just for the transcript, we actually have the

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proposed transcript orders, if you allow us.

THE COURT: Sure. Just that one portion would not be available to you. Thank you all.

(Proceedings concluded at 2:35 p.m.)

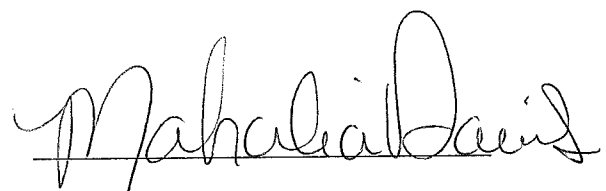
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CERTIFICATE

I, Mahalia Davis, an Official Court Reporter for the District of Columbia Courts, do hereby certify that I reported, by machine shorthand, in my official capacity, the proceedings had and testimony adduced, upon the trial in the case of United States v Ingmar Guandique, Criminal Case Number 2009 CF1 9230, in said Court, on the 7th day of February, 2013.

I further certify that I have transcribed the foregoing 18 pages from said machine shorthand notes and reviewed same with the backup tapes, if any, to the best of my ability.

In witness whereof, I have hereto subscribed my name, this the 8th day of April, 2013.


Official Court Reporter